

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

David Hirsch	:	
-vs-	:	
Northern Illinois Gas Company d/b/a	:	07-0389
Nicor Gas Company	:	
	:	
Complaint as to billing/charges in	:	
Barrington, Illinois.	:	

ORDER

By the Commission:

On June 27, 2007, David Hirsch ("Complainant") filed a verified complaint pursuant to Section 10-108 of the Illinois Public Utilities Act (220 ILCS 5/10-108) ("the Act") against Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor" or "Respondent"). He alleged that Nicor, following installation of a new meter at his residence at 41 Steeplechase Road, Barrington Hills, IL, failed for three months to send him a bill for usage, later billed his account \$8,468.52, and that because of Nicor's negligence and intentional withholding of information, he was prevented from knowing his gas usage and related costs from November 2006 to March 2007.

Pursuant to notice given in accordance with the rules and regulations of the Commission, a pre-hearing conference was held in this matter on July 25, 2007. Thereafter, this matter came on for hearing on August 23, 2007 before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois. Complainant appeared pro se. Respondent appeared by counsel and presented the testimony of Jean Wojcik, Respondent's Supervisor, Customer Relations. At the conclusion of the hearing on August 23, the record was marked "Heard and Taken".

On September 18, 2007 the ALJ issued a Proposed Order in this matter. Both Parties filed Exceptions.

I. Complainant Position

Mr. Hirsch testified that Nicor installed a new meter at his residence in November 2006, however he did not know what the readings on the old or new meters were. He testified that he had paid a bill for 162.40 dated November 21, 2006 and next received a bill for usage on March 3, 2007 for \$2,974.00. When he called Nicor about this on the same day, he was advised only that he could be put on a payment plan. The person he

spoke to also asked him to check the reading on his meter. He informed her that it read 6067 and he was told that the next bill would be significantly higher. Mr. Hirsch testified that the next bill he received was on March 12, 2007 for \$8,468.52. He added that he did not contact Respondent between November 2006 and March 2007 to determine why he had not received a bill and he was unaware of any meter reading between the time the meter had been installed and March 3, 2007.

Mr. Hirsch testified that he had an in-ground swimming pool installed at his home in 2006 and the water was gas heated with a new water heater. The heater continued operating during the winter months. He stated that if he had been alerted to the amount of gas that would be needed to heat the pool, he would have had the gas shut off on December 12, 2006. The bill prior to December 12 was so low, however, that it led him to believe that even with the gas on, the next bill might not be too expensive. Thereafter he received the March 2007 bills for \$2,974.00 and \$8,468.52. He stated that all of the increase was due to heating the pool, but not so all of the charges, because he also consumed other gas. He testified that he had calculated that he consumed gas at an average of \$1,776.00 for the five month period November through March for the past five years, prior to the time the pool was installed. The November average was only \$162.00.

Mr. Hirsch testified that sometime on or after March 6, 2007, Respondent read his gas meter, after which he received a series of bills all on March 27 for \$2,160, \$3,551, \$2,964 and \$8,524. The bill for \$2,160 shows corrected billings with credited amounts on October 3, 2006, November 3, 2006, February 28, 2007 and March 8, 2007. The bill for \$3,551 shows an estimated reading of 1647. The bill for \$2,964 notes a corrected billing dated March 22 and a credit of \$1,391 that reduced the amount due from \$3,550 to \$2,964. The last bill he received, for \$8,524, contained an actual reading of 7346.

II. Respondent Position

Ms. Wojcik testified that Peggy Hirsch requested a new meter from Respondent that would support enough gas load for home heating, cooking appliances and a new swimming pool heater. The new meter was installed on November 30, 2006 with an actual reading of zero. The bill to close out the previous meter, #3610204, was issued February 28, 2007. The next reading on the new meter, #4285013, was an actual one taken January 3, 2007 and the bill was sent to Complainant on March 22, 2007. Ms. Wojcik stated that during the period that Complainant did not receive a bill, readings were taken on a bimonthly basis.

Ms. Wojcik sponsored Respondent's Exhibit 1, a Billing Transcript Report for new meter #4285013. Page A shows the dates and results of meter readings. Readings without the notation "E" are actual readings. Pages B, C, D and E reflect Complainant's gas consumption in therms used and amounts billed from June 2, 2000 through March 31, 2006. Ms. Wojcik testified that it takes Respondent between 60 to 90 days to generate a bill after a new meter is installed, but the meter reading process

would continue during that time. Ms. Wojcik sponsored Respondent's Exhibit 2, the bill reflecting an actual reading of 7813 from meter #3610204 when it was removed on November 30, 2006. Respondent's Exhibit 2, a bill to Complainant for \$2,974.00, was issued on February 28, 2007.

III. Respondent's Motion for Directed Finding

Respondent moved for a directed finding in this Docket, arguing that pursuant to 83 Ill. Adm. Code 280.100, a utility may render a bill for commodities or services supplied to a residential customer within one year from the date supplied. In the instant matter, there was a billing error and the bill was provided to Complainant within a three or four-month period. No regulations were violated and Complainant has failed to allege facts that would indicate such.

Complainant replied that he was unaware that Respondent could bill on an annual basis. He was under the impression that utility companies sent out monthly bills to cover services provided.

Respondent's motion should not be granted. We find that Complainant's allegations raise issues, in support of which he is entitled to produce evidence. An analysis of parties' respective evidence is the proper method of concluding this Docket.

VI Commission Analysis and Conclusions

The essence of Mr. Hirsch's complaint is that, for reasons unknown to him, he was not billed by Nicor for three months following a meter change on November 30, 2006, when his gas bill was only \$162.00. On March 27, 2007, he received a flurry of bills (Complainant's Exhibits 1, 2, 3, 4 and 5), four of which (Exhibits 1, 3, 4, 5) show increasing amounts due on the new meter, culminating in what Respondent's counsel termed a corrected bill, for \$8,523.72 (not \$8,468.52 as Complainant claimed). (Exhibit 5). After installation of the new meter, Respondent entered an estimated reading of 981 dated February 2, 2007. (Exhibit 4). On March 7, it entered a second estimated reading of 1647 (Exh. 3) and followed that with an actual reading of 7346 the same day. (Exhibit 5).

The reason for the sharp increase in Complainant's gas bills in 2007 is due to the additional gas load that resulted when Mr. Hirsch decided to let the swimming pool water heater continue operating during the winter of 2006-2007. Readings of the new meter eventually disclosed gas usage far greater than had been, on two prior occasions, estimated. The actual reading of 7346 on March 7 appears to correct the billing error to which Respondent had referred in its motion for a directed finding. While no specific figures were made available showing the individual gas consumption of the pool heater, we consider it well within reason to conclude that such usage, combined with the gas usage of various household appliances, including the furnace, increased the total consumption of the dwelling to such an extent during the winter months that the bill of which Mr. Hirsch complains is neither a distortion nor inaccurate.

Mr. Hirsch's complaint also stems from what was actually a four-month delay before the \$8,523.72 bill was issued. Even though we regard his confusion generated by all of the bills he received on March 27, 2007 to be understandable, Ms. Wojcik's testimony that it takes Respondent's system 60 to 90 days to issue a bill following installation of a new meter, is unrefuted. (Transcript at 36). Moreover, 83 Ill. Adm. Code 280.100(a) states, in relevant part, that a utility "...may render a bill for services or commodities provided to 1) A residential customer only if the bill is presented within one year from the date the services or commodities were supplied..." The bill for \$8,523.72 was sent to Complainant well within the one-year period specified in Section 280.100(a).

The Commission is aware that, due to the four-month lag in issuing the \$8,523.72 bill, Complainant may have experienced something akin to "sticker shock", but this is not contrary to the regulations governing billing. Nothing in Respondent's handling of Complainant's account suggests negligence or deliberately withholding information. Complainant can, however, obtain some measure of relief under Section 280.100(d), which states, in relevant part:

When past due bills occur following the issuance of a "make-up" bill for previously unbilled utility service resulting from...utility billing error...and where the "make-up" bill exceeds the otherwise normal bill for such billing period by 50%, a utility shall review the bill with

the customer, and shall offer to accept payments toward the liquidation of the amount over a normal bill over a period mutually agreed to by the utility and the customer. This period of time shall be at least as long as the period over which the excess amount accrued...

We will direct Respondent in this Order to review the bill with Complainant and devise a payment plan covering not less than four months to enable Complainant to satisfy the outstanding sum due.

V. Exceptions to Proposed Order

Page 2, ¶2

Complainant objected that the summary of his testimony omits that the existing pool replaced an in-ground pool. Respondent stated that this exception provides no information that would entitle Complainant to any relief and raises no allegations to indicate that Nicor has violated any regulations. Our review of the record in this matter fails to disclose any mention that the existing pool replaced an inground pool.

The summary of Complainant's testimony has been amended to reflect that he said not all charges were due to heating the pool, but all increases were. It also has been amended to reflect that the \$1,776 calculation is not a monthly average but an average for a five-month period from November to March.

Complainant claims that the increase being disputed is \$6,693, the difference between \$8,469 and the five-month average consumption of \$1,776. Respondent stated that this exception provides no information that would entitle Complainant to any relief and raises no allegations to indicate that Nicor has violated any regulations. Mr. Hirsch complained about receiving bills for \$2,974 and \$8,468, and testified that he had calculated average usage of \$1,776 for the five-month period from November to March for the past five years, but at no time during the hearing did he subtract \$1,776 from \$8,469 and testify that \$6,693 was the sum he disputed.

Page 2, ¶4

Complainant disputes Ms. Wojcik's testimony that "The next meter reading on the new meter, #4285013, was an actual one taken January 3, 2007 and the bill was sent to Complainant on March 22, 2007." Complainant says it should read "...an actual one taken on December 21, 2006, then again on January 3, 2007, and again February 28, 2007 and then the bill was sent to Complainant March 3, 2007." Respondent stated that this exception provides no information that would entitle Complainant to any relief and raises no allegations to indicate that Nicor has violated any regulations.

A review of Ms. Wojcik's testimony shows that the original summary of her testimony is correct. (8/23/07 transcript at 32). Complainant also asserted that she

erred in testifying that readings were taken on a bimonthly basis, when they were actually taken on a monthly basis. The original summary of her testimony correctly states bimonthly. (Id. at 33).

Page 2, ¶5

Complainant disputed Ms. Wojcik's testimony that it takes 60 to 90 days to generate a bill after a new meter is installed. He argued that this conflicted with the information given to him by Nicor Billing Senior "Brandy", who informed him on March 12, 2007 that monthly billing statements "...were intentionally withheld because the 'Nicor system got locked up on December 21, 2006 because a higher than normal reading was recorded on your account' ". "Brandy" also said that "...it is standard operating procedure to withhold billing until three meter readings could be made, in our case starting on December 21, 2006 and concluding on February 28, 2007...When asked why the statements are withheld, she said 'so the customers do not get alarmed'".

Respondent countered in its Exceptions that Ms. Wojcik has verified the accuracy of her testimony and that statements by "Brandy" were not called into question at hearing. Respondent also stated that this exception provides no information that would entitle Complainant to any relief and raises no allegations to indicate that Nicor has violated any regulations.

The statements attributed to the Nicor Billing Senior are contained only in Mr. Hirsch's complaint and appear nowhere in the transcript of the August 23 proceeding. Furthermore, Ms. Wojcik's testimony on both direct and cross-examination, that it takes 60 to 90 days to generate a bill after a new meter is installed, is unrefuted. (Id. at 36, 41). Only Ms. Wojcik's testimony is of evidentiary value and for that reason it prevails in any conflict with statements outside of the hearing record.

Page 3, ¶4

Complainant also disputes our conclusion that "The essence of Mr. Hirsch's complaint is that, for reasons unknown to him, he was not billed by Nicor for three months following a meter change..." (Proposed Order at 3.) He again raises the statements made to him by the Nicor Billing Senior on March 12, 2007. Respondent answered that this exception provides no information that would entitle Complainant to any relief and raises no allegations to indicate Nicor has violated any regulations.

Complainant's exception does not compel us to change our conclusion. We reiterate that the statements of the Nicor Billing Senior were outside the hearing record and therefore carry no evidentiary weight.

Page 3, ¶5

Complainant also took exception to our statement that he had requested installation of a new meter. Ms. Wojcik testified that "...a request was done by Peggy

Hirsch to have a new meter installed...” (8/23/07 transcript at 31). Complainant also argued that the decision to leave the pool heated during the winter resulted from not receiving bills that would have indicated an unusual charge for doing so. Respondent answered that this exception provides no information that would entitle Complainant to any relief and raises no allegations to indicate Nicor has violated any regulations.

We have amended the conclusions to reflect that it was not Complainant who requested the new meter. We reaffirm that we see nothing misleading in Respondent’s billing practices and refer again to Ms. Wojcik’s unrefuted testimony regarding the issuance of bills 60 to 90 days after installation of a new meter. (Id. at 36, 41).

VI. Findings and Ordering Paragraphs

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) on June 27, 2007, David Hirsch filed a complaint against Northern Illinois Gas Company d/b/a Nicor Gas Company, alleging that following installation of a new meter at his home, it failed for four months to send him a bill for usage, later billed his account \$8,523.72, and that because of Nicor’s negligence and intentional withholding of information, he was prevented from knowing his gas usage and related costs for four months;
- (2) Northern Illinois Gas Company d/b/a Nicor Gas Company is a corporation engaged in the sale of natural gas to residential and small business customers in Illinois and, as such, is an alternative gas supplier pursuant to Section 19-110 of the Act;
- (3) the Commission has jurisdiction over the parties and the subject matter herein;
- (4) Complainant failed to establish that Respondent erred in billing Complainant for gas usage from November 2006 to March 2007 or that Respondent was negligent or deliberately withheld billing information from Complainant;
- (5) in accordance with 83 Ill. Adm. Code 280.100(d), Respondent should review the bill for \$8,523.72 with Complainant and devise a payment plan for liquidation of the outstanding sum over a mutually agreed-upon period time of not less than four months;
- (6) Respondent’s motion for a directed finding should be denied;
- (7) the complaint should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by David Hirsch on June 27, 2007 against Northern Illinois Gas Company d/b/a Nicor Gas Company be, and is hereby, denied.

IT IS FURTHER ORDERED that Respondent's motion for a directed finding is denied.

IT IS FURTHER ORDERED that, in accordance with 83 Ill. Adm. Code 280.100(d), Respondent shall review the bill for \$8,523.72 with Complainant and devise a payment plan for liquidation of the outstanding sum over a mutually agreed-upon period time of not less than four months.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 29th day of October, 2007.

(SIGNED) CHARLES E. BOX

Chairman